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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2022-OESE-0151]

Final priorities, requirements, and definitions—State-Tribal Education Partnership Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final priorities, requirements, and definitions.

SUMMARY: The Department of Education (Department) announces final priorities, requirements, and definitions for the State-Tribal Education Partnership (STEP) program, Assistance Listing Number (ALN) 84.415A. The Department may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2023 and subsequent years. The Department is taking this action to support the development of partnerships among Tribal educational agencies (TEAs), State educational agencies (SEAs), and local educational agencies (LEAs) to support the creation or expansion of TEAs to directly administer education programs, including formula grant programs under the Elementary and Secondary Education Act of 1965, as amended (ESEA), consistent with State law and under a written agreement among the parties.

DATES: These priorities, requirements, and definitions are

effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Donna Bussell, U.S. Department of Education, 400 Maryland Avenue, SW, room 3W207, Washington, DC 20202-6450. Telephone: 202-987-0204. Email: donna.bussell@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purposes of STEP are to: (1) promote Tribal self-determination in education; (2) improve the academic achievement of Indian children and youth; and (3) promote the coordination and collaboration of TEAs (as defined in this notice) with SEAs and LEAs to meet the unique education and culturally related academic needs of Indian students.

Program Authority: Section 6132 of the ESEA (20 U.S.C. 7452).

Public Comment: We published a notice of proposed priorities, requirements, and definitions (NPP) for this program in the *Federal Register* on December 28, 2022 (87 FR 79824). The NPP contained background information regarding the proposed priorities, requirements, and definitions. In response to our invitation to comment in the NPP, no comments on the proposed priorities, requirements, or

definitions were received. As discussed in the *Analysis of Comments and Changes* section, we made changes to Priorities 1 and 3, as well as to two definitions. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes:

Priority 1--Improve Identification of Native Students for Title VI Indian Education Formula Grant Program.

Comments: None.

Discussion: We are revising the title of the priority to better align with the text of the priority, which is focused on improving identification of students for the Title VI Indian Education formula grant program.

We are also revising the priority to better align with the statutory definition of "Indian" in ESEA section 6151(3), which, in relevant part, includes a student if they are a member of a Tribe or if they are a descendent in the first or second degree of a Tribal member. Although the proposed priority referred to Tribal affiliation generally, the ESEA definition of Indian includes students with a descendant relationship in the first or second degree for Title VI formula grant purposes.

Changes: We have revised the title of the priority to "Improve Identification of Native Students for Title VI Indian Education Formula Grant Program." We have also revised the priority to reflect that Tribal affiliation includes an affiliation through a descendent relationship.

Priority 3--Enhance Tribal Consultation.

Comments: None.

Discussion: As explained in the NPP, we proposed Priority 3, in part, to advance Tribal self-determination in education by supporting TEAs to convene collaborative meetings with SEAs and LEAs to promote meaningful consultation. The majority of comments from Tribal leaders during Tribal Consultation on April 26, 2021, expressed that those partnerships should include both SEAs and LEAs and should be rooted in Tribal consultation at the local level. Tribal leaders also supported the need for partnerships to include both entities. To that end, we referred to "SEA goals" and "ESEA State Plans" in the proposed priority but did not make specific reference to Tribal consultation with SEAs. Therefore, we are revising the priority to better address comments made during Tribal consultation and better reflect the goal of prioritizing projects that enhance consultation with SEAs and LEAs.

Additionally, we recognize the importance of a Tribe or TEA determining who should be invited to enhance Tribal consultation. In referring to "affected LEAs" in the proposed priority, we limited the types of LEAs that could be considered to those that meet the definition of "affected LEA" in ESEA section 8538(c)(1). We believe that a Tribe or TEA could reasonably conclude that the participation of an LEA that does not meet the ESEA

definition of "affected LEA" could promote meaningful consultation; therefore, we are expanding the types of LEAs included in this priority to provide maximum flexibility to the Tribes and TEAs.

Changes: We have revised this priority to add the option for projects to enhance consultation with an SEA, at least one LEA, or both. We also have removed the reference to "affected LEAs" and the corresponding definition.

Priority 5--Create a TEA.

Comments: None.

Discussion: To improve clarity, we are revising this priority to describe the types of applicants that are eligible, rather than the types of applicants that are not eligible, under the priority.

Changes: We have rephrased this priority to provide that to meet this priority, applicants must be an Indian Tribe or Tribal organization approved by an Indian Tribe that is applying to create a TEA.

Definitions

Established TEA.

Comments: None.

Discussion: Under the proposed definition of "established TEA," to demonstrate that a TEA has an existing prior relationship with an SEA or LEA, the TEA must have entered into a final written agreement (FWA) with the SEA or LEA. Upon further consideration and to maximize flexibility for

TEAs, we are revising the definition to permit TEAs to provide evidence of an existing prior relationship with an SEA or LEA other than an FWA. We understand that while some TEAs may have an FWA to coordinate with an LEA or SEA, particularly TEAs that have received STEP grants, it is possible that a TEA worked with an LEA or SEA without an FWA.

Changes: We have revised the first criterion of the definition to remove the reference to a final written agreement.

FINAL PRIORITIES:

Priority 1--Improve Identification of Native Students for Title VI Indian Education Formula Grant Program.

To meet this priority, an applicant must propose to partner with an LEA to develop and maintain effective and culturally responsive methods to better identify, and support the identification of, Indian students who may be undercounted or under-identified as eligible for an ESEA title VI formula grant program consistent with section 6112 of the ESEA. This includes identifying Indian students who are not enrolled in a Tribal Nation but who have an affiliation with a Tribal Nation through being a descendant in the first or second degree from a Tribal Nation member as described in ESEA section 6151(3).

Note: The Family Educational Rights and Privacy Act (FERPA) does not permit an LEA to disclose personally

identifiable information (PII) from students' education records to a TEA without parental consent unless the disclosure meets one of FERPA's exceptions to the general consent requirement. The most relevant exceptions to FERPA's general consent requirement that may apply if certain conditions are met are the "school official," "studies," and "audit/evaluation" exceptions. For further information on FERPA, contact the Department's Student Privacy Policy Office at <https://studentprivacy.ed.gov/>.

Priority 2--Increase Coordination of Indian Education Programs.

To meet this priority, an applicant must submit a high-quality plan that describes how it will strengthen its partnership with the SEA or LEA, to enhance coordination among all existing federally funded Indian education grants that impact the partner SEA or LEA to support the academic achievement of Indian students. A high-quality plan includes goals, milestones, and timelines for coordination, and must identify which existing federally funded programs the applicant is coordinating.

Priority 3--Enhance Tribal Consultation.

Projects to improve existing local Tribal consultation efforts with an SEA or LEA. To meet this priority, applicants must provide a high-quality plan that describes how the project will increase the frequency of consultations with an SEA, at least one LEA, or both, and

develop meaningful consultation procedures to help each LEA or SEA meet its goals as defined in their ESEA Consolidated State and Local Plans.

Priority 4--New STEP Grantee.

To meet this priority, an applicant must be an early TEA or applying to create a TEA and must not have previously received a STEP award from the Department.

Priority 5--Create a TEA.

To meet this priority, an applicant must be an Indian Tribe or Tribal organization approved by an Indian Tribe that is applying to create a TEA.

Priority 6--Expand Capacity of Early TEAs.

To meet this priority, an applicant must be an early TEA.

Priority 7--Expand Capacity of Established TEAs.

To meet this priority, an applicant must be an established TEA.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute or competitive preference through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive



preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

#### FINAL REQUIREMENTS:

##### Application Requirement 1--Draft Written Agreement with Partners:

An applicant must provide a Draft Written Agreement (DWA), with the appropriate SEA and/or LEA partner(s). For applicants creating a new TEA, a DWA is only required with an LEA. For applicants expanding capacity for an early TEA or established TEA, a DWA with both an SEA and LEA is required.

##### Program Requirement 1--Hire Project Director within 60 Days:

Grantees must hire a project director as soon as practicable, but no later than 60 days after the beginning of the performance period.

##### Program Requirement 2--Final Written Agreement with

Partners:

Grantees must submit a final written agreement signed by all parties entering into the agreement within 120 days after receiving the grant award notification.

FINAL DEFINITIONS:

The Department establishes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

*Directly administer* means conducting, as the fiscal agent, SEA functions or LEA functions for education programs, including ESEA formula grant programs, consistent with State law and the FWA.

*Draft written agreement* (DWA) means an unsigned written agreement with an attached letter of support from each SEA or LEA partner indicating each has reviewed the project plan and will finalize the DWA into an FWA within 120 days of grant award notification. The DWA must include the following:

- (1) The roles and responsibilities for each partner.
- (2) An agreed-upon list of deliverables

(Note: Deliverables cannot be direct services to Indian students).

- (3) Identification of at least one point of contact for each partner.

- (4) A description of the resources each partner will contribute to the project.

(Note: Resources do not need to be monetary or matching funds).

*Early TEA* means a TEA that meets one or two of the criteria in the definition of an established TEA.

*Established TEA* means a TEA that meets three or more of the following criteria:

(1) Has received a STEP grant in 2012 or subsequent years, or provides evidence of an existing prior relationship with an SEA or LEA.

(2) Has an existing Tribal education code.

(3) Has directly administered at least one education program within the past 5 years.

(4) Has administered at least one Federal, State, local, or private grant within the past 5 years.

(5) Has authorized teaching certifications.

*Final written agreement (FWA)* means a signed written agreement between the TEA and the SEA or LEA; the TEA and one or more LEAs; or the TEA and both an SEA and one or more LEAs, that documents the commitment and timeline of the agreeing partners to implement the terms and conditions specified in the DWA.

*New TEA* means a Tribal entity that does not meet the definition of "early TEA" or "established TEA."

*Tribal consultation* means that—

(1) The SEA or LEA provides Tribes the opportunity for input;

(2) The SEA or LEA considers and responds to the input from Tribal leaders or their officially designated proxies regarding an education program that affects the Tribal Nation or TEA; and

(3) The partner Tribal Nation provides written confirmation that the consultation was meaningful and in good faith.

*Tribal educational agency (TEA)* means the agency, department, or instrumentality of an Indian Tribe that is primarily responsible for supporting Tribal students' elementary and secondary education. This term also includes an agency, department, or instrumentality of more than one Tribe if the Tribes are in close geographic proximity or have cultural connections to each other and agree through joint Tribal government resolution to have a combined TEA.

Note: This document does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, or definitions, we will invite applications through a notice in the *Federal Register*.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) must determine whether this regulatory

action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and

definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated

present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final priorities, requirements, and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We believe that the final priorities, requirements,

and definitions will not impose significant costs on eligible TEAs that receive assistance through the STEP program. We also believe that the benefits of implementing the final priorities, requirements, and definitions outweigh any associated costs.

We believe that the costs imposed on applicants would be limited to costs associated with developing applications, including developing partnerships with SEAs and LEAs, and that the benefits of creating a partnership that is likely to be sustained after the end of the project period would outweigh any costs incurred by applicants. The costs of carrying out activities proposed in STEP applications will be paid for with program funds. Thus, the costs of implementation will not be a burden for any eligible applicants, including small entities. We also note that program participation is voluntary.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79, except that federally recognized Indian Tribes are not subject to those rules. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our



specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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James F. Lane,  
*Senior Advisor, Office of the  
Secretary, Delegated the Authority  
to Perform the Functions and  
Duties of the Assistant Secretary,  
Office of Elementary and Secondary  
Education.*

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